

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

# MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's *ex parte* motion for a temporary restraining order (TRO). For the reasons stated below, the motion will be denied.

Plaintiff submitted a motion for TRO to the Court without giving notice to the adverse party. Under Fed. R. Civ. P. 65(b):

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or that party's attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Plaintiff has not submitted the requisite affidavit or verified complaint required under the Rule. Nor has plaintiff certified in writing the efforts made to give notice

and the reasons why notice should not be required. As a result, the motion will be denied.

Additionally, to determine whether preliminary injunctive relief is warranted, the Court must balance the threat of irreparable harm to movant, the potential harm to the nonmoving party should an injunction issue, the likelihood of success on the merits, and the public interest. Dataphase Sys. V. CL Sys., 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). Plaintiff complains that defendants are in the process of repossessing his truck. These allegations do not show that the harm plaintiff may suffer is irreparable. Should plaintiff's truck be wrongfully repossessed, plaintiff may sue for money damages. As a result, plaintiff is not entitled to a temporary restraining order.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's *ex parte* motion for TRO [#5] is **DENIED**.

Dated this 1st day of August, 2008.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE